

Case No. 2:19-cv-03006-DCN

1. Plaintiffs South Carolina Coastal Conservation League, et al., challenge a regulation that (1) repealed the “Clean Water Rule”—a 2015 rule defining “waters of the United States” under the Clean Water Act—and (2) recodified the prior regulatory definition of “waters of the United States.” See ECF No. 1 ¶ 1 (challenging Final Rule, Definition of “Waters of the United

States”—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“Repeal Rule”).

2. On January 17, 2020, Defendants moved to dismiss the complaint for lack of subject matter jurisdiction. See ECF No. 28.

3. On January 23, 2020, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Navigable Waters Protection Rule: Definition of ‘Waters of the United States.’” This rule defines “waters of the United States” under the Clean Water Act and replaced the definition promulgated in the Repeal Rule, which is the subject of this litigation. The Navigable Waters Protection Rule was published in the Federal Register on April 21, 2020, see 85 Fed. Reg. 22,250 (Apr. 21, 2020), and went into effect on June 22, 2020.

4. There have been several challenges to the Navigable Waters Protection Rule filed to date, including one before this Court wherein dispositive briefing is underway. See, e.g., S.C. Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-DCN, ECF No. 1 (D.S.C. Apr. 29, 2020); Conservation Law Found. v. EPA, No. 1:20-cv-10820-DPW, ECF No. 1 (D. Mass. Apr. 29, 2020); California v. Wheeler, No. 3:20-cv-03005-RS, ECF No. 1 (N.D. Cal. May 1, 2020); Chesapeake Bay Found., Inc. v. Wheeler, 1:20-cv-01064-RDB, ECF No. 1 (D. Md. Apr. 27, 2020); N.M. Cattle Growers’ Ass’n v. EPA, 1:19-cv-00988-JHR-SCY, ECF No. 26 (D.N.M. Apr. 27, 2020); Or. Cattlemen’s Ass’n v. EPA, 3:19-cv-00564-MM, ECF No. 90 (D. Or. May 1, 2020); Wash. Cattlemen’s Ass’n v. EPA, 2:19-cv-00569-JCC, ECF No. 72 (W.D. Wash. May 4, 2020); Murray v. Wheeler, 1:19-cv-01498-LEK, ECF No. 17 (N.D.N.Y. May 11, 2020); Colorado v. EPA, 1:20-cv-01461-WJM, ECF No. 1 (D. Colo. May 22, 2020); Pasqua Yaqui Tribe v. EPA, 4:20-cv-00266-RM, ECF No. 1 (D. Ariz. June 22, 2020); Navajo Nation v. Wheeler, 2:20-cv-00602-MV-GJF, ECF No. 1 (D.N.M. June 22, 2020); Puget Soundkeeper All.

v. EPA, 2:20-cv-00950-JCC, ECF No. 1 (W.D. Wash. June 22, 2020); Envl. Integrity Project v. EPA, 1:20-cv-01734-KBJ, ECF No. 1 (D.D.C. June 25, 2020).

5. Abeyance remains appropriate considering the Court’s May 29, 2020 Order, the publication of the replacement definition of “waters of the United States,” and the dispositive briefing underway in a separate challenge to the new rule before this Court. The new rule and disposition of challenges thereto may affect the issues and arguments at play in this litigation and other related legal challenges regarding the regulatory definition of “waters of the United States.”

Accordingly, the parties respectfully request that the Court hold this case in abeyance for an additional 60 days.

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**FOR PLAINTIFFS:**

s/ J. Blanding Holman IV

D.S.C. Bar No. 9805  
Southern Environmental Law Center  
463 King Street, Suite B  
Charleston, SC 29403  
Telephone: (843) 720-5270  
Facsimile: (843) 414-7039  
bholman@selcsc.org

s/ Frank S. Holleman III

D.S.C. Bar No. 1911  
Kelly F. Moser\*  
Geoffrey R. Gisler\*  
Southern Environmental Law Center  
601 West Rosemary Street, Suite 220  
Chapel Hill, NC 27516-2356  
Telephone: (919) 967-1450  
Facsimile: (919) 929-9421  
fholleman@selcnc.org  
kmoser@selcnc.org  
ggisler@selcnc.org

**FOR DEFENDANTS:**

PETER M. MCCOY, JR.  
*United States Attorney*  
District of South Carolina

s/ Lee Berlinsky

Fed. ID# 05443  
*Assistant United States Attorney*  
151 Meeting Street, Suite 200  
Charleston, SC 29401  
Telephone: (843) 266-1679  
Lee.Berlinsky@usdoj.gov

\* *Pro hac vice*

**FOR INTERVENOR-DEFENDANTS:**

s/ W. Thomas Lavender, Jr.

W. Thomas Lavender, Jr.  
Joan Wash Hartley  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
(803) 253-8233  
TLavender@nexsenpruet.com  
jhartley@nexsenpruet.com

Timothy S. Bishop\*  
Colleen M. Campbell\*  
MAYER BROWN LLP  
1999 K Street NW  
Washington, DC 20006  
(202) 263-3000  
tbishop@mayerbrown.com  
ccampbell@mayerbrown.com

Brett E. Legner\*  
MAYER BROWN LLP  
71 South Wacker Drive  
Chicago, IL 60606  
(312) 782-0600  
blegner@mayerbrown.com